

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES,

Plaintiff,

vs.

JOSE ROJAS-GUZMAN,

Defendant.

Case No. 3:10-CR-00109-RCJ-WGC  
3:11-CR-00088-RCJ

**ORDER**

Defendant moves for an early release from his prison sentence claiming that COVID-19 constitutes an “extraordinary and compelling reason for release.” (Mot. Early Release.)<sup>1</sup> Because Defendant has not shown exhaustion of his administrative remedies, the Court denies his motion.

**FACTUAL BACKGROUND**

Defendant is currently serving a 240-month prison sentence in Federal Correction Institution Oakdale (FCI Oakdale) for convictions of drug-related crimes and illegal reentry into the United States. (Mot. Early Release.) After serving more than ten years of his sentence, Defendant now requests early release under 18 U.S.C. § 3582(c), claiming that COVID-19 has

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<sup>1</sup> The parties have filed identical briefs in Defendant’s two cases. In 3:10-CR-00109-RCJ-WGC, Defendant motion is ECF No. 212, and the Government’s response is ECF No. 215. In 3:11-CR-00088-RCJ, Defendant motion is ECF No. 64, and the Government’s response is ECF No. 67.

1 reached FCI Oakdale and, as of March 29, 2020, two inmates and one staff member had tested  
2 positive for the virus. (*Id.* at 5.) In his motion, he argues that these facts merit his early release but  
3 neither alleges nor provides evidence that he has exhausted his administrative remedies.

#### 4 **LEGAL STANDARD**

5 A district court may not generally “modify a term of imprisonment once it has been  
6 imposed.” 18 U.S.C. § 3582(c). One exception to this general rule is that a court may reduce a  
7 sentence for “extraordinary and compelling reasons” upon a motion from the Director of the  
8 Bureau of Prisons or the defendant. § 3582(c)(1)(A)(i). A district court may not, however, grant  
9 such a motion brought by a defendant unless he “has fully exhausted all administrative rights to  
10 appeal a failure of the Bureau of Prisons to bring a motion on [his] behalf or the lapse of 30 days  
11 from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.”  
12 § 3582(c)(1)(A). Statutory exhaustion requirements “establish mandatory exhaustion regimes,  
13 foreclosing judicial discretion.” *Ross v. Blake*, 136 S. Ct. 1850, 1857 (2016).

#### 14 **ANALYSIS**

15 Defendant’s motion cannot succeed because there is no allegation—let alone proof—that  
16 he has exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a  
17 motion on his behalf or even that he made such a request to the warden. *See United States v. Raia*,  
18 954 F.3d 594, 597 (3d Cir. 2020) (denying the defendant’s motion for early release under  
19 § 3582(c)(1)(A)(i) based upon COVID-19 concerns because he did not administratively exhaust).  
20 Defendant’s failure to administratively exhaust his motion is fatal and precludes the Court from  
21 reaching its merits. *See generally Shaw v. Bank of America Corp.*, 946 F.3d 533, 541 (9th Cir.  
22 2019) (“[S]tatutorily-provided exhaustion requirements deprive the court of jurisdiction . . . .”  
23 (quoting *Gallo Cattle Co. v. U.S. Dep’t of Agric.*, 159 F.3d 1194, 1197 (9th Cir. 1998))).

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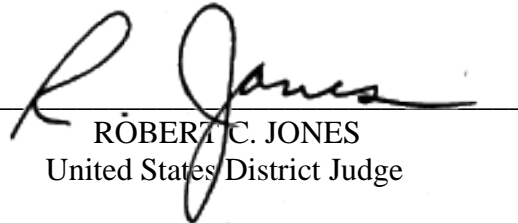
1 **CONCLUSION**

2 IT IS HEREBY ORDERED that Defendant's Motion for Compassionate Release (ECF  
3 No. 212) in case 3:10-CR-00109-RCJ-WGC is DENIED.

4 IT IS FURTHER ORDERED that Defendant's Motion for Compassionate Release (ECF  
5 No. 64) in case 3:11-CR-00088-RCJ is DENIED.

6 IT IS SO ORDERED.

7 Dated: May 11, 2020.

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10 ROBERT C. JONES  
11 United States District Judge  
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